

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

CLAY CHEVROLET, INC.

Employer¹

and

DISTRICT LODGE 15, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO

Petitioner

Case 1-RC-21570

DECISION AND DIRECTION OF ELECTION²

The Employer, doing business as Clay Chevrolet-Hyundai, with its principal office and place of business in Newton, Massachusetts, is engaged in the sale and service

¹ The name of the Employer appears as amended at the hearing.

² Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

The record includes evidence that the Employer sells and services new Chevrolets and Hyundais. Hyundai is a Korean manufacturer. I take administrative notice that the new automobiles sold by the Employer are manufactured in, and shipped directly from, states outside Massachusetts. I also take administrative notice that the Board has found that the Petitioner is a labor organization within the meaning of the Act. See e.g. *Last Radio Group Corp.*, 327 NLRB 405, 406 (1998).

Therefore, upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

of automobiles.³ The Employer's Newton operations include five departments: New Cars, Used Cars, Service, Body Shop, and Parts. New Cars, Service, and Parts are located in the main building at 431 Washington Street. The body shop, doing business as Clay Auto Body, is located at 444 Watertown Street, about a mile from the main building. Used Cars, also located on Watertown Street, is across from the Body Shop.

The Petitioner seeks to represent a unit of all full time and regular part-time auto service technicians and lube technicians employed at the Washington Street location, but excluding all other employees. There are about 17 employees in the unit sought. The Employer contends that the smallest appropriate unit must also include the approximately nine body shop technicians at Clay Auto Body. There is no history of collective bargaining.

Therefore, the issues involved in this case are: (1) whether a unit confined to the service technicians and the lube technicians employed at the Washington Street location constitutes an appropriate unit; or (2) whether the body shop technicians, employed at the Watertown Street location, share such a community of interest with the service technicians as to mandate their inclusion in the petitioned-for unit.

I find a unit limited to the service and lube technicians at the main building is an appropriate unit. The factual basis and analysis for this finding are set forth below.

FIXED OPERATIONS

There are three departments that constitute fixed operations: the service department, the body shop, and the parts department.⁴ Although there are technicians employed in both the service and body shop departments, the Petitioner would include only the service department technicians in the unit.

All three departments are under the direction of Fixed Operations Manager John Simcox. Reporting to Simcox are Body Shop Manager Bruce Tribier, Service Manager Bill Maloney, and Parts Manager Rich Phelan.⁵

³ Under the umbrella of "Clay Family Dealerships" there are, in addition to Clay Chevrolet-Hyundai, two other dealerships, Tom Chevrolet in Norwood and Clay Nissan in Dedham, neither of which is included in this proceeding.

⁴ The parts department, under Parts Manager Rich Phelan, engages in retail and wholesale over-the-counter sales. In addition, there are back-counter sales to the service department and the body shop. There are about nine employees in the parts department, but none of them is a technician. Neither party seeks to include parts department employees in the unit.

⁵ The parties stipulated, and I find, that Simcox, Tribier, Maloney, and Phelan are statutory supervisors excluded from the unit found appropriate.

The three managers under Simcox do not have the authority to hire, terminate, or discipline employees solely on their own. Rather, Simcox and the department managers participate together in all hiring, firing, and discipline decisions for the respective departments. Simcox also participates with the department manager in all interviews of job applicants for the three operations under his direction.

SERVICE DEPARTMENT

The Petitioner seeks to represent the 15 service technicians and two lube technicians who report to Service Manager Bill Maloney. Other service department employees who report to Maloney, but who no one seeks to include, are service advisors, the receptionist, a flagger, a dispatcher, valets, and a driver.⁶

The service department opens at 7:00 a.m. The technicians work 8:00 a.m. to 5:00 p.m. The service department, unlike the body shop, is also open on Saturdays. The service technicians rotate so that there are two or three technicians working on any given Saturday.

The service customer meets first with an advisor who writes up the repair order. That order is given to the dispatcher who matches the order with the appropriate technician. If the order is simply for an oil change or a tire rotation, that order is given to one of the two lube technicians.

The service technician receives a repair order with the customer's complaint. The technician diagnoses the problem. He then writes up the diagnosis. Because it is more labor-cost effective to simply replace a failed part with a new one, seventy-five percent of the repair orders are not actually repairs of existing parts. Rather, most repairs involve replacing a failed part with a new one.

After the technician diagnoses the problem and writes up the needs, approval for the work is secured. The technician then performs the necessary work to meet the customer's needs and concerns.

Once the repair is completed, the repair order is channeled through the dispatcher and the flagger. The flagger pays the technician based on the information written on the back of the order as to what work was actually done. The cashier creates an invoice and the customer is contacted to pick up the car.

⁶ The four service advisors greet the customers and write up the service order. The receptionist takes reservations and helps dispatch work to the used car technician. The flagger pays the technicians for their work and does the accounting for the customer bills. The dispatcher takes the repair order and dispatches it to the technician. There are also about three valets and one courtesy shuttle driver.

The Employer charges service department customers a labor rate of \$80 per hour. In calculating the cost of each service, the Employer uses standard service estimating manuals that set an allotted time for each task. The service technicians in turn are paid a flat hourly rate that ranges from \$15 to \$24 per hour.

The lube technicians are paid a flat rate that ranges from \$10 to \$12 per hour. One lube technician, who has trouble making the lube time targets, offsets his time with valet work or car tagging. The Employer estimates that, if you average out the compensation of the service technicians, a service technician earns about \$50,000 per year. In contrast, the lube technicians average \$16,000 to \$18,000 per year.

The Employer does not require service technicians to have any certifications. It appears that there is no more than possibly one service technician who has an ASE certification. At least one service technician does have some General Motors certifications secured prior to employment at Clay. Although the Employer does offer opportunities for technicians to obtain various certifications, according to Simcox, the technicians have expressed no interest in taking advantage of these opportunities.

The lube technicians are not as skilled as the service technicians. The lube technician position, which is entry level, does not require any diagnostic abilities.

BODY SHOP

Employed at Clay Auto Body on Watertown Street are nine technicians and one painter's assistant who report to Body Shop Manager Tribier.⁷ The Employer contends they must be included in the unit, while the Petitioner would exclude them.

The body shop also opens at 7:00 a.m. As with the service technicians, the body shop technicians work 8:00 a.m. to 5:00 p.m. The body shop is not open on Saturdays, however, although Simcox contends you may find a body shop technician working on any given Saturday.

Cars arrive for repair at the body shop one of two ways. Either they are towed in or they are dropped off by the customer. Although customers usually drop their car off directly at the Watertown Street location, they may drop it off at the main building on Washington Street on Saturdays or after hours.⁸ If a car is dropped off at the main building, a valet shuttles it over to the body shop.

Cars that come into the body shop frequently already have a repair cost estimate written up by the insurance company. Insurance company estimates cover, however,

⁷ Tribier also has an assistant who handles paperwork and answers the telephone.

⁸ The main building is open from 7:00 a.m. to 9:00 p.m. Monday through Thursday, Fridays 7:00 a.m. to 6:30 p.m., Saturdays 8:00 a.m. to 5:00 p.m., and Sundays 12:00 p.m. to 5:00 p.m.

only what can be readily observed. Therefore, Tribier often needs to write up supplemental estimates to cover repair of hidden damage revealed only when the damaged area is disassembled. Tribier will also write up an estimate if a customer comes in without one from an insurance company. Once the estimate is finalized and approved, Tribier assigns the repair order to the technician.

As with the service technicians, the body shop technicians need to diagnose problems, such as why a door is not closing, or why there is a leak or a vibration. The body shop technicians, with some exceptions, perform any necessary mechanical work needed to return the vehicle to its pre-accident condition. One exception is a wheel alignment. Cars needing alignments are sent over to the service department on Washington Street since the body shop does not have the machine that is needed for that task. More than half of the vehicles repaired at the body shop need wheel alignments.

There are also some miscellaneous reasons why the body shop may send a vehicle to the service department for work, such as when there is a recall on the vehicle that the customer wants taken care of, or if the customer wants an inspection sticker. As with the wheel alignments, sticker inspections require a special machine that the body shop does not have. The Employer contends that, if you add the vehicles requiring wheel alignments with the miscellaneous reasons, seven to eight out of ten cars are shuttled back and forth between the two facilities in the course of their body shop repair.

Even with vehicles that are shuttled back and forth from the body shop to the service department, however, the service department technicians and the body shop technicians do not usually work together on a vehicle. Rather, the service technician performs his share of the work at the service department and the body shop technician performs his share at the body shop.⁹

At times, Tribier does not agree that the insurance company's estimate is sufficient to cover the cost of mechanical repairs needed to return the vehicle to pre-accident condition. Since the insurance company will, however, pay the full cost of a repair that the body shop contracts out, the body shop may sublet the disputed mechanical work to the service department to maximize the insurance reimbursement. If so, the mechanical repair is done by the service department technician instead of the body shop technician.

⁹ The Employer did offer considerable testimony on the repair of an accident damaged 1999 Chevrolet Suburban that entailed some joint work by the service department and the body shop technicians. This vehicle spent considerable time at both the body shop and the service department in the course of its three-month \$18,000 repair. In the course of this repair there was a perplexing problem with the frame. This necessitated a transfer of the vehicle to the service department for diagnosis and repair since a frame replacement, which was needed, requires a lift not found at the body shop. This was not, however, the typical body shop repair.

As with the service repairs, it is more cost effective to replace rather than repair accident damaged body parts, such as fenders. Therefore, as with the service technician's work, the Employer estimates that seventy-five percent of the body shop technician's work is simply unbolting parts and bolting on replacements.

Most repaired or replaced body parts must also be painted. About a year ago the body shop went to a modified paint production shop. This means each body shop technician does the paint prep on his assigned vehicle, but one painter usually does all of the finish painting.¹⁰ In the past, each technician did all of his own painting.

The employer charges body shop customers a labor rate of \$36 per hour. The body shop also uses standard estimating manuals to calculate repair costs, but these are not the same manuals used in the service department. The body shop technicians are paid a flat rate of \$14 per hour. As with the service technicians, the Employer estimates that if you average out their compensation, the body shop technicians earn about \$50,000 per year.

As with the service technicians, the Employer does not require the body shop technicians to have any certifications.

FACTS COMMON TO BOTH SERVICE AND BODY SHOP

The service and body shop technicians are both subject to the same job performance standards, which are set forth on the Employer's Performance Worksheet. The Employer refers to this worksheet as a job description. Company policy is that managers evaluate all technicians once a year in January, using the Performance Worksheet as the guide. The record does not reflect whether these evaluations are in writing, however, nor is there any evaluation in evidence. The one service technician who testified at the hearing denied that he has been evaluated yearly.

Both the service and the body shop technicians have a morning and an afternoon break, in addition to a lunch break. The time of the break depends on the arrival of the coffee truck. Both the service department and the body shop have a break room and a locker room for the use of technicians at that particular site. All technicians punch a time clock at their respective locations.

The service technicians and the body shop technicians wear a standard uniform, but with different patches. The service technicians have a "Clay Family Dealership Technician" patch, while the body shop technicians have a "Clay Auto Body" patch.

¹⁰ In a full paint production shop the painter would do all of the prep, along with the final painting.

There have been no temporary transfers of technicians between the service department and the body shop. In the past six years a service department dispatcher¹¹ transferred to the body shop to assume the body shop manager position. He later transferred back to a service department technician position. There was one body shop technician, who is no longer employed, who transferred to the service department. The record does not reflect when the transfer occurred.

Service technicians and the body shop technicians keep and use similar tools in their toolboxes. Other tools, such as sanding tools and body hammers, would more likely be found in a body shop technician's box. Both groups of technicians usually purchase their own tools. Some technicians have spent \$20,000 to \$50,000 on tools. The Employer supplies some high cost tools, as well as tools that are not frequently used.

In both the service department and the body shop there is an air conditioning machine, strut compressor, wheel balancer, tire machine, and jack stands. Therefore, depending on the damage, a body shop technician may perform the same mechanical work that would be performed by a service technician in the course of his work.

As noted above, however, not all repairs can be performed at both locations. In this regard, the body shop has a frame machine, which the service department does not. There is a front-end alignment machine and a brake lathe in the service department, which are not found in the body shop. When work requires one of these machines the vehicle is shuttled to the appropriate location for the repair.

FACTS COMMON TO ALL EMPLOYEES

The Employer maintains a central business office for all its operations. This office, located above the sales and service areas at the main building, handles all payables, receivables, billing, the in-house registry for vehicle plates and registrations, as well as all human resource matters such as storage of personnel records and payroll. Friday is payday for everyone. Usually department managers distribute the checks. All of the Employer's operations, including the Tom Chevrolet and Clay Nissan dealerships, utilize a central computer network for all operations.

There is a common employee handbook for all employees. The employee handbook has a problem solving procedure. The first step is the immediate supervisor. The second step is the department manager. The third step is the general manager.

There is a standard job application form for all employees. The Employer places newspaper advertisements for all job openings together. All newly hired employees participate in a common orientation, regardless of department.

¹¹ Dispatcher is not a position that would be included in the unit.

All full time employees share the same benefit programs, which include holidays, vacations, sick leave, health insurance, life and disability insurance, and retirement. The Employer holds benefit and other informational meetings once a year, usually at the separate sites. All employees are subject to the same conduct and work rules.

ANALYSIS:

It is well settled that a union need not seek to represent the most appropriate unit or most comprehensive unit, but only an appropriate unit. *Transerv Systems*, 311 NLRB 766 (1993); *Morand Bros. Beverages Co.*, 91 NLRB 409 (1950). In determining unit scope, the Board first considers the petitioning union's proposals. If the unit sought is appropriate, the inquiry ends. If it is inappropriate, the Board will scrutinize the employer's proposals. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989).

In deciding whether a unit is appropriate, the Board weighs various factors, including differences or similarities in the method of wages or compensation, hours of work, employment benefits, supervision, working conditions, job duties, qualifications, training, and skills. The Board also considers the degree of integration between the functions of employees, contact with other employees, and interchange with other employees, as well as history of bargaining. *Overnite Transportation Co.*, 322 NLRB 723, 724, (1996), citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). The petitioner's desire as to the unit is a relevant consideration, though not dispositive. *Florida Casino Cruises*, 322 NLRB 857, 858 (1997), citing *Airco, Inc.*, 273 NLRB 348 (1984).

It is equally well established that, when considering a multi-facility operation, a single facility unit is presumptively appropriate for collective bargaining. *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). The presumption in favor of a single location can be overcome "by a showing of functional integration so substantial as to negate the separate identity of the single-facility unit." *Ibid.* The factors that the Board examines in making this determination are "centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; distance between locations; and bargaining history, if any." *J & L Plate*, 310 NLRB 429 (1993). The burden is on the party opposing a single-facility unit to present evidence sufficient to overcome the presumption. *Ibid.*

The Employer maintains that the body shop is merely an annex of the Washington Street location. Even accepting that position, I find that a unit limited to the service technicians and the lube technicians at the Washington Street location is an appropriate unit, and, on balance, the body shop technicians do not possess such a sufficient community of interest with the petitioned-for employees so as to require their inclusion. I note first that, despite the skill differences between the petitioned-for service department technicians and lube technicians, the Board has found that they both perform mechanical work and, therefore, form a homogeneous group separate from other service department employees. See *Fletcher Jones Chevrolet*, 300 NLRB 875, 876 (1990).

The body shop technicians do perform mechanical work incidental to their goal of returning the vehicle to pre-accident condition; I find, however, that these similarities in skills and function do not negate the separate identity of the two groups nor require the inclusion of the body shop technicians in the Washington Street service technician unit. There is no prior bargaining history between the parties. The body shop is geographically separate from the Washington Street location, doing business under a separate name, Clay Auto Body. The service department and the body shop have separate on-site break rooms and locker rooms. They have similar uniforms, but have different patches. The service and body shop technicians report daily to their respective locations and perform all of their duties at their respective locations. There is separate on-site supervision for the two groups.

The service and body shop technicians are paid different rates based on different estimating manuals. The hours of the technicians are different in that the body shop, unlike the service department, is not open on Saturdays. I find it significant that there is no temporary interchange between the service department and the body shop and there has been negligible permanent interchange. Finally, the Petitioner does not seek to represent the body shop technicians. Therefore, the body shop technicians do not share such a substantial community of interest that their inclusion in the unit is mandated. *Fletcher Jones Chevrolet*, supra at 876; *Dodge City of Wauwatosa*, 282 NLRB 459 (1986).

Contrary to the Employer, I find that the Watertown street location is more than just an annex, and constitutes a separate facility due to the geographic difference and its separate function. Under this analysis, the same factors described above support the conclusion that the presumption in favor of a single facility unit has not been rebutted by the Employer, and that the single facility unit as petitioned for is appropriate. In this regard I note particularly the lack of temporary interchange between the petitioned-for employees and the body shop employees, as well as the geographic separation of the physical facilities and the lack of common immediate supervision.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service department technicians and lube technicians employed by the Employer at its 431 Washington Street, Newton, Massachusetts location but excluding all other employees, managerial employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by District Lodge 15, International Association of Machinists and Aerospace Workers, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before December 27, 2002. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by January 3, 2003

/s/ Rosemary Pye
Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 20th day of December 2002.

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